

1 SCHILLING LAW GROUP, PC
2 Charity M. Gilbreth (Bar No. 223504)
3 *charity.gilbreth@schillinglawgroup.com*
4 Matthew G. Ardoin (Bar No. 293350)
5 *matt.ardoin@schillinglawgroup.com*
6 Tyler H. Hunt (Bar No. 313326)
7 *tyler.hunt@schillinglawgroup.com*
8 1100 Newport Center Drive, Suite 250
9 Newport Beach, California 92660
10 Telephone: (949) 760-6120
11 Facsimile: (949) 760-6129

7 Attorneys for Defendant BLIZZARD
8 ENTERTAINMENT, INC., erroneously sued as
ACTIVISION BLIZZARD, INC

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

13 ERIK ESTAVILLO,
14 Plaintiff,
15 v.
16 BLIZZARD ENTERTAINMENT, INC.,
17 erroneously sued as ACTIVISION BLIZZARD,
18 INC.,
Defendant.

CASE NO.

**BLIZZARD ENTERTAINMENT, INC.'S
NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. § 1331 (FEDERAL
QUESTION)**

[Filed concurrently with Civil Case Cover Sheet, Notice of Appearance, Certification of Interested Entities or Persons, and Corporate Disclosure Statement]

Complaint Filed: August 2, 2019

1 **TO THE COURT, ALL PARTIES, THEIR ATTORNEYS OF RECORD, AND THE**
 2 **CLERK OF THE ABOVE-ENTITLED COURT:**

3 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §1331, Defendant Blizzard
 4 Entertainment, Inc., erroneously sued as Activision Blizzard, Inc. (“Blizzard” or “Defendant”),
 5 by and through its attorneys, hereby removes to this Court the above-captioned matter entitled
 6 *Erik Estavillo v. Activision Blizzard, Inc.* (the “Action”), which is currently pending in the
 7 Superior Court of the State of California for the County of Santa Clara, Case No. 19-CV-352264
 8 (the “State Court Action”). Pursuant to 28 U.S.C. § 1446(a), a copy of all the pleadings,
 9 processes and orders that have been served on Blizzard in the State Court Action are attached
 10 hereto as **Exhibit A**. Removal is proper because the Action presents a federal question by
 11 bringing claims under the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (the
 12 “ADA”).

13 **I. TIMELINESS OF REMOVAL**

14 On August 5, 2019, Plaintiff Erik Estavillo (“Plaintiff” or “Estavillo”) served Blizzard
 15 with a copy of the Summons and Complaint in the State Court Action. *See Exhibit A at 1*
 16 (**Summons**). This Notice of Removal is timely because it is filed within thirty (30) days of
 17 Blizzard receiving a copy of the Summons and Complaint. *See* 28 U.S.C. §§1446(b)(1),
 18 (b)(2)(A).

19 **II. REMOVAL JURISDICTION BASED ON FEDERAL QUESTION**

20 The State Court Action is a civil action over which this Court has original jurisdiction
 21 under 28 U.S.C. §1331. This Court has federal question jurisdiction because Plaintiff’s ADA
 22 cause of action arises under federal law. 28 U.S.C. §1331. Federal law specifically grants any
 23 person subjected to discrimination on the basis of disability in violation of the ADA with a cause
 24 of action. *See* 42 U.S.C. § 12188(a). “[A] federally created claim for relief is generally a
 25 ‘sufficient condition for federal-question jurisdiction.’” *Mims v. Arrow Fin’l Services, LLC*, 565
 26 U.S. 368, 377 (2012) (quoting *Grable & Sons Metal Products, Inc. v. Darue Engineering &*
 27 *Mfg.*, 545 U.S. 308, 317 (2005)).

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1 Pursuant to 28 U.S.C. § 1337(a), this Court has supplemental jurisdiction over Plaintiff's
 2 only other cause of action that alleges violations of Section 1723 of the California Civil Code.
 3 Plaintiff's ADA and Section 1723 claims are intertwined because each requires an evaluation of
 4 Blizzard's digital website, and in particular, the notice to consumers of the company's refund
 5 policy. *See* Exhibit A at 7-8. Since both claims are so related that they form part of the same
 6 controversy under Article III of the U.S. Constitution and derive from a common nucleus of
 7 operative fact, supplemental jurisdiction over the Section 1723 claim is appropriate. *United*
 8 *Mine Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966) ("The state and federal claims
 9 must derive from a common nucleus of operative fact").

10 **III. VENUE**

11 Venue is proper in the Northern District of California, San Jose Division, pursuant to 28
 12 U.S.C. §§1441(a) and 1446(a) because the county in which the State Court Action is pending is
 13 located within the Central District, San Jose Division. *See* 28 U.S.C. §84(c)(1); Civil L.R. 3-
 14 2(e).

15 **IV. NOTICE TO PLAINTIFF AND THE SUPERIOR COURT FOR THE COUNTY
 16 OF SANTA CLARA**

17 Contemporaneously with the filing of this Notice of Removal in the United States District
 18 Court for the Northern District of California, San Jose Division, written notice of such filing will
 19 be served on Plaintiff, who is representing himself *pro se*. In addition, a copy of this Notice of
 20 Removal will be filed with the Clerk of the Court for the Superior Court of the County of Santa
 21 Clara.

22 **V. SIGNATURE PURSUANT TO RULE 11 OF THE FEDERAL RULES OF CIVIL
 23 PROCEDURE**

24 The undersigned counsel for Blizzard has read the foregoing and signs this Notice of
 25 Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C.
 26 §1146(a).

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1 **WHEREFORE**, Blizzard respectfully requests that the State Court Action pending
2 before the Superior Court of the State of California for the County of Santa Clara be removed to
3 the United States District Court for the Northern District of California, San Jose Division.

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5 Dated: September 3, 2019

SCHILLING LAW GROUP, PC

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7 Charity M. Gilbreth
8 Matthew G. Ardoine
9 Tyler H. Hunt

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By: /s/ Matthew G. Ardoine

Matthew G. Ardoine
Attorneys for Defendant
BLIZZARD ENTERTAINMENT, INC.,
erroneously sued as ACTIVISION
BLIZZARD, INC.